CHARTERED ACCOUNTANTS™
AUSTRALIA + NEW ZEALAND

9 July 2018

Committee Secretary
Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Submitted via email to superannuation@treasury.gov.au

Dear Sir/Madam,

Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018

Chartered Accountants Australia and New Zealand welcomes the invitation to make a submission on the proposed legislation. We would be pleased to discuss any aspect of our submission.

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets. .We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. .The alliance represents 788,000 current and next generation accounting professionals across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.

Introductory Comments

Overall Chartered Accountants ANZ supports the government's objective of trying to ensure member account balances are not eroded by excessive fees or inappropriate insurance arrangements.

However for reasons outlined below we do not support the proposed restriction on the size of fees that super funds can charge to smaller account balances as outlined in the Bill.

Like the government, we have concerns about the impact of life insurance premiums for younger super fund members, those with modest account balances and inactive accounts. As detailed below before implementing legislative amendments in this area we encourage the government to seek independent research from an appropriately qualified expert.

Finally we have some concerns with the government's policy to speed up consolidation of low balance inactive accounts. To make this policy effective we believe the government should make available tax concessions as well as considering what might happen to amalgamated super fund monies.

Fees charged to superannuation members

Chartered Accountants ANZ agrees with the government that ideally something needs to be done about balance erosion for some members from excessive charges and other costs. We agree that any fee restrictions should apply to all fees and charges regardless of how and where they arise within a super fund.

However at this point in time we do not agree with the government's approach as contained in the Bill and below we suggest other alternative solutions.

Trustee Covenants

The general trust law covenants – which can be disclaimed in a trust instrument – and the covenants in the *Superannuation Industry (Supervision) Act 1993* (SIS Act) both require trustees to act in the best interests of all beneficiaries and to act fairly between all beneficiaries.

Fee restrictions create potential fee cross subsidisation

Chartered Accountants ANZ believes that in a large number of funds to effectively implement the government's proposed policy, trustees will need to charge higher fees to those with account balances of at least $6,000.

In effect, this would mean that a super fund trustee would not be acting fairly between all beneficiaries and this issue would exist despite the protections proposed in sub-section 99G(7) of the SIS Act as contained in the Bill.

It is inappropriate for government legislation to promote trustees breaching their fiduciary duties.

Postpone fee restriction policy until Schedule 3 of Bill large processes are complete

We note that proposed Schedule 3 of the Bill, which we discuss in greater detail below, will see super funds transfer 'inactive' account balances less than $6,000 to the ATO.

Once this process is complete only active account balances below $6,000 will remain in super funds. If any of these accounts become inactive they will, in time, be transferred to the ATO.

We therefore believe that it would be better for this proposed fee restriction policy to be removed from the Bill. Super funds should be required to determine the number of likely smaller account balances that remain after implementing the initial Schedule 3 transfers and to determine the size of the fee subsidy that might be applied to larger account balances. It may be that the fee subsidy is then immaterial.

Better to help prevent small account balances occurring

We believe it is essential that the government put in place policies that reduce the likelihood that smaller account balances occur in the first place.

The Superannuation Guarantee monthly Ordinary Time Earnings (OTE) threshold is $450. This threshold has been in place since July 1992 and never been indexed. At present employers are required to make monthly contributions of $42.75. After contributions tax the net contribution is $36.34 per month or $436 per year. When the Super Guarantee increases to 12% from 1 July 2025 the net of tax annual contribution would be $550 assuming the super fund tax rate remain the same.

We believe this OTE threshold should be the equivalent of the national minimum wage for 38 hours per week. The current weekly minimum wage for these number of hours is $719.20 or just under $37,400 per annum.

This policy would see a net of tax annual contribution for 2018/19 of $3,020 for a 9.5% employer contribution.

In addition we believe the Superannuation Guarantee minimum OTE threshold should then be increased at the same rate as minimum wage increases.

If the minimum wages increases by 3% per annum until July 2025 then the minimum annual after tax contribution would be $4,692 in the 2025/26 financial year.

Exit fees restrictions

As noted above we are not opposed to the government seeking to prevent the charging of excessive fees.

Our concerns about limiting ongoing fees – that is, fee cross subsidisation – also extend to the proposal to limit exit fees.

However as detailed in the Productivity Commission draft report[1] we do not believe the government or its regulators have sufficient knowledge of all super fund costs including when and how they occur. We therefore believe it would be best for the regulators to thoroughly research this issue before publishing a report that can then be used by government to prepare appropriate legislative amendments.

Insurance for superannuation members

We agree that the current model of group insurance policies do enable some super fund members to obtain life insurance for a lower fee and less restrictive underwriting than they would be able to obtain if they personally applied directly to a life insurer.

However unfortunately the current voluntary opt-out insurance model means that in some cases super fund members will pay for insurance they neither need nor want and, because of personal circumstances, claims may be denied.

At present the group insurance model that applies to most fund members means that insurers cannot be ‘selected against’. Any ability to allow a super fund member to self-select their participation in the arrangement alters the contract dynamics and therefore pricing that insurers are willing to offer.

We do not believe the government has sufficient data to determine the medium and longer term impacts of the proposed policy and suggest that further research from an appropriately qualified expert – who has knowledge of life insurance pricing and underwriting as well as the operation of super funds – be completed before this policy is finalised. We also believe additional research the Productivity Commission is conducting in this area will also provide valuable information that will assist in final designing of this important policy.

[1] http://www.pc.gov.au/inquiries/current/superannuation/assessment/draft

Inactive low balance accounts and consolidation into active accounts

The explanatory memorandum that accompanies the Bill states at paragraph 1.6, "in 2015/16, account with balances below $6,000 comprised over 40 per cent of all accounts in the system".

We support the provisions in the Bill that require funds to provide details of inactive small accounts regularly to the ATO.

We have two concerns with the proposed policy demanding the bulk transfer of member accounts to the ATO and the provisions that would force it to transfer those proceeds to a taxpayer's active account:

1. With such a large transfer of members and potentially a large amount of money to the ATO it is highly likely that many super funds will have to dispose of assets before enacting bulk transfer of member money. We suggest that a CGT exemption for any assets disposed of as part of this process is warranted. This concession would assist in the unnecessary balance reduction of all super fund members including those compulsorily transferred to the ATO and those that remain in the fund.

2. We are concerned that low balances will be transferred to active member accounts with an account balance of at least $6,000 that will be incurring higher fees and insurance premiums. This may not be in these member's best interests. We suggest the process needs to allow taxpayers to request, within an appropriate timeframe, their retirement savings are not to send to a particular fund and have the right to select another fund.

Should you require any further information or wish to discuss the contents of this submission, please contact ….

Yours sincerely,

Chartered Accountants Australia and New Zealand